**Coatings Application and Waterproofing Company of Indiana, Inc., Petitioner *and* Roofers Local 106.** Case 25–UC–164

May 29, 1992

DECISION ON REVIEW

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On November 27, 1990, the National Labor Relations Board, by a three-member panel, granted the Employer's request for review of the Regional Director's Decision and Order (relevant portions of which are attached) dismissing the Employer's petition seeking clarification of the bargaining unit represented by the Union because he found that the petition raised a work assignment issue rather than a unit clarification issue. The Employer's petition seeks to exclude from the unit ''all Coatings Application and Waterproofing Company, Inc. employees while working in the geographical jurisdiction of Roofers Local 106 that not employed out of its Louisville, Kentucky location.''

Having reviewed the entire record, the Board concludes that the record is insufficient to show that the Union is seeking to represent the employees that the Employer's petition seeks to exclude from the bargaining unit. Absent this evidence of a representational claim, the Board agrees with the Regional Director that the petition should be dismissed.

According to the undisputed testimony of the Union's business manager, Bobby Williams, when he learned of the job at the Shoals Community School, he contacted the Employer's secretary-treasurer, David Murnin, and informed him that he had signed a contract with the Union which covered the Shoals' job. Williams also told Murnin that he understood that employees from the Louisville operation were doing the work. Murnin asked if Williams wanted to put two or three people on the job. Williams replied that this ''would not have been in compliance with the contract,'' and told Murnin he was filing a grievance because ''all our people should be on the job.'' (The Regional Director incorrectly described Williams' testimony as hearsay.) According to William Reed, the Employer's president, the Union filed a grievance which claimed that ''we weren't using their people.'' There is no other evidence concerning the nature of the Union's grievance.

On this record, it is apparent that the Union desired that the Employer assign the Shoals' work to the employees it then represented and *not* to the Louisville employees. This is the essence of the labor dispute which precipitated the Union's grievance and the Employer's filing of its UC petition. Further, on this record, it is apparent that the Union's contractual contention was in support of its desire for assignment of the work to the employees it represented rather than to the Louisville group. This evidence clearly suggests that a work dispute is the core issue here, and just as clearly suggests that the Union was not seeking to represent the Louisville employees. *Harley-Davidson Motor Co.*, 234 NLRB 1121, 1123 (1978). See generally *Carey v. Westinghouse Electric Corp.*, 375 U.S. 261 (1964). Evidence—as opposed to speculation—of a clear representational objective on the part of the Union with respect to the Louisville employees is simply absent from the record.

Addressing these circumstances, our dissenting colleague appears to espouse the principle that *any* claim under a collective-bargaining agreement is inherently representational. Such a view finds no support in case law or the facts of this case. None of the decisions cited in his opinion support this proposition. Indeed, contractual claims in support of work-jurisdiction contentions are routine in Section 10(k) cases. See, e.g., *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402, 1410 (1962).[1] In any event, we find on the facts before us that the Union made it plain it did not want the Louisville employees involved in the Shoals' work, and that it *did* want the employees it represented to perform the work. The Union's contractual claim must be interpreted in this context.

Accordingly, the Regional Director's decision is affirmed and the petition is dismissed.

MEMBER RAUDABAUGH, dissenting.

I conclude that the Union is making a representational claim. I therefore dissent from my colleagues' conclusion that the claim is jurisdictional. My reasons are set forth below.

The issue in this case is whether the Union was making the representational claim that its contract with Coatings of Indiana covered Coatings of Louisville (the entity performing at the Shoals' site) *or* was making only the jurisdictional claim that union personnel should be placed on that site. I conclude that the Union was making the former claim. To be sure, a decision in favor of the Union's claim would result in the placing of union personnel on the Shoals' job (through the application of the contract's hiring hall clause). But

[1] Single-employer contentions are also not uncommon in Sec. 10(k) cases. See, e.g., *Iron Workers District Council (Madison Industries)*, 307 NLRB 405, 407 (1992). Contrary to our dissenting colleague, the Union's single-employer contention, in the factual context of this case, appears to show no more than its desire to establish that the Employer controlling assignment of the Shoals' work—Coatings Louisville—is the same employer with whom the Union has a collective-bargaining agreement—Coatings Indiana, and that thus, by contractual obligation, the work must be assigned to employees represented by the Union. This is consistent with the Union's essential claim, which clearly appears to raise a work dispute. In view of the scant evidence before us concerning the nature of the Union's contractual grievance, the single-employer contention does not establish that this dispute is representational.

this is a consequence of the representational claim; it does not belie the existence of the representational claim.

Union Business Manager Bobby Williams, in his undisputed testimony, admitted that the Union was claiming that the contract be applied to the Shoals' job. Thus, in his statements to the Employer, Williams made clear that the focus of the Union's concern was that the contract be applied to the Shoals' job. According to Williams, upon learning of the situation at the Shoals' job, he contacted the Employer's vice president, David Murnin, ''and informed him that he had signed a contract to perform roofing work in Shoals, Indiana, which is under our jurisdiction.''

Further, when Murnin offered to put some of the employees represented by the Union on the job, Williams declined the offer and responded that doing so would not have been in compliance with the contract. Williams then told Murnin he was filing a grievance because ''all our people should be on the job.'' Thus, the demand that the union personnel staff the job was a corollary to the demand that the contract be applied. That is, given the contract's hiring hall provision, the application of the contract would require the hiring of the union personnel.[1]

Significantly, the Union concedes that it is claiming that the contract should be applied to the Shoals' job. Thus, the Union argues that ''[t]he threshold determination that must be made in this case is whether Coatings Louisville and Coatings Indiana constitute a single employer for purposes of being bound by the terms of the Collective Bargaining Agreement entered into between the Employer and the Union.'' The Union further describes the dispute as ''regarding whether or not Coatings Louisville is sufficiently related to Coatings Indiana for purposes of being bound by the terms of the Collective Bargaining Agreement entered into between Coatings Indiana and Roofers Local 106, specifically the jurisdictional hiring provisions of said Agreement.''

In sum, the essential basis of the Union's claim is that the Shoals' job is covered by its contract with the Employer.

On the basis of the above, I conclude that the Union's claim that its contract with Coatings of Indiana covers Coatings of Louisville presents a representational claim[2] and not a jurisdictional dispute.[3]

[1] See *Laborers Local 1 (Del Construction)*, 285 NLRB 593, 594–595 (1987) (accretion issue found although one union claimed that the employee performing the assigned work should be a union member, and both the other union and the employer ''framed the issues in terms of a work assignment dispute''); *Laborers Local 231 (C. Iber & Sons)*, 204 NLRB 37, 39, fn. 1 (1973) (the Board looks at the dominant object in determining whether there is a work assignment dispute).

[2] See *Printing Pressmen Local 7 Chicago (Metropolitan Printing Co.)*, 209 NLRB 320, 321–322, fn. 6 (1974); *Laborers Local 1 (Del Construction Co.)*, supra. See also *Retail Clerks Local 1689 (Market Basket Stores)*, 256 NLRB 548 (1981) (in which the Board found ''no dispute over specific work or job tasks, but merely a dispute over which of two unions should represent certain employees''). Cf. *Harley-Davidson Motor Co.*, 234 NLRB 1121, 1123, fn. 2 (1978) (jurisdictional dispute where a union's damand was focused on the disputed work as opposed to representation of the employees performing the work. The union claimed, inter alia, ''we are entitled to the work and what happens to the employees is the responsibility of the Employer'').

[3] Contrary to the claim of the majority, I am not asserting that any claim under a collective-bargaining agreement is inherently representational. Rather, I am asserting that where, as here, the Union claims that two entities are a single employer and that the contract covering the one entity also covers the other, the Union has made a representational claim. A unit clarification preceeding can resolve the single employer question and the related single unit question. The mere fact that the Union's claim, if found valid, would result in the hiring of union personnel (through the operation of the contract's hiring hall clause) does not detract from the representational nature of the claim.

## APPENDIX

3. The current scope of the Union's recognition is described in the current four-year collective bargaining agreement effective April 1, 1988 as follows:

### ARTICLE I

> wherever the term ''Employee'' is used herein, the same shall be deemed to mean and refer to a person employed by the Employer and having job classification of or performing labor as a Journeyman Roofer, Damp and Waterproof Worker, Apprentice or Helper.

A further provision sets forth the geographic jurisdictional limits of the Union (several counties in Indiana, Kentucky and Illinois). The Petitioner, Coatings Application and Waterproofing Company of Indiana, Inc. (hereinafter Coatings of Indiana), seeks clarification of the bargaining unit to exclude:

> all Coatings Application and Waterproofing Company, Inc. employees while working in the geographical jurisdiction of Roofers Local 106 that are employed out of its Louisville, Kentucky location.

Coatings of Indiana, an Indiana corporation located in Evansville, Indiana, is engaged in the application of sprayed-in-place polyurethane roofing, where chemicals are heated and pressurized by proportioning equipment and forced out through a gun to the roof, after which elastomeric waterproofing is applied. The corporate president is Willian Reed, who owns half of the stock. The vice-president, owner of the remaining stock and day-to-day manager is David Cates. The corporate secretary-treasurer, Dave Murnin, works in an office in St. Louis, Missouri (as does President Reed). Murnin is employed by a entity by the name of Missouri Paint and Varnish, which performs administrative and payroll services for Coatings of Indiana for a fee of 3% of gross sales. About

2 to 12 (the number fluctuates) roofing employees are employed and work under the supervision of Manager David Cates and Foreman Julian Cates. David Cates does a majority of the hiring, as well as all the firing, scheduling of work, estimating, purchasing and sales. Although there is a conflict in testimony about the beginning of the contractual relationship between the Union and Coatings of Indiana, it is clear that it has been a continuous one since at least 1975.

Coatings Application and Waterproofing Company, Inc. (hereinafter Louisville), is a Missouri corporation with facilities in Louisville, St. Louis and Atlanta. It is the employees of Louisville that the Petitioner seeks to have clarified as excluded from the bargaining unit. Louisville is engaged in the installation of single-ply roofing, which consists of installing and waterproof membrane from rolls. The corporate president is William Reed, and he owns all the stock. The corporate secretary-treasurer is Dave Murnin and Louisville also pays his employer, Missouri Paint and Varnish, 3% of gross sales to perform its administrative and payroll functions. Louisville's area manager is Louis Harley, who does all the hiring, firing and adjustment of employee complaints, as well as estimating, sales and purchasing. Harley sets the rates of pay and makes promotion and layoff decisions. Louisville employs 1 foreman and 3 to 15 laborers and roofers. In the nine years that Louisville had been in business, it has never had any bargaining relationship with a labor organization. Louisville employees do not receive hospitalization insurance, vacation, pension or any other benefits. Their wages range from 5 to 12 dollars per hour and raises are given at Harley's discretion.

Although on some occasions Coatings of Indiana has performed work in or near Louisville, Kentucky area, there is no evidence that any of the employees working on those jobs had ever worked for Louisville.[1] There is no transfer or interchange of equipment between the two companies. The record indicates a difference in skills required of the employees, stemming from the difference in materals used and how they are applied. As outlined above, there is no common supervision or common control of labor relations, although at the highest corporate level there is some common ownership and two common officers and the two companies use the same provider of payroll and administrative services.

From the record, it appears that the instant petition was filed as a result of a claim by the Union that a job at Shoals Community Schools was being performed by employees of Louisville and that it should be performed by members of the Union. This petition was not filed to determine the unit placement of employees performing a new operation, or to determine the unit placement of employees following a change in the Employer's method of operation or corporate organization, nor is there a claim of staturory basis for exclusion of employees from the unit. Therefore, unit clarification is not appropriate. *Al J. Schneider & Associates*, 227 NLRB 1305 (1977). If anything, the petition is a claim by the Employer that certain work belongs to a certain group of employees (Louisville employees) and is, thus, a work assignment issue not appropriately considered or resolved in a unit clarification proceeding. *The Cincinnati Gas and Electric Company*, 235 NLRB 424 (1978).

## ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is dismissed.

---

[1] There was hearsay testimony at the hearing that the Union business manager, Bobby Williams, contacted Secretary-Treasurer Murnin regarding a job being performed by Louisville employees that Williams contended should be done by his members and that Murnin offered to allow the Union to put 2 or 3 people on the job. This offer was declined. Thus, there had been no interchange of employees between the two companies.